Supreme Court, U.S.
FILED
MAR 15 2001
CLERK

No. 00-1369

In The

Supreme Court of the United States

ROBERT H. BARRETT,

Petitioner,

v.

BOROUGH OF CARLISLE,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Pennsylvania

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

MARTSON DEARDORFF WILLIAMS & OTTO
EDWARD L. SCHORPP, ESQUIRE
Counsel of Record
Ten East High Street
Carlisle, PA 17013-3093
(717) 243-3341
Attorneys for Respondent Borough of Carlisle

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

COUNTERSTATEMENT OF QUESTION PRESENTED

SHOULD THIS COURT DENY THE PETITION FOR CERTIORARI WHERE PETITIONER HAS FAILED TO RAISE HIS CLAIMS IN AVAILABLE ADMINISTRATIVE PROCEEDINGS, THEREBY DEPRIVING PENNSYLVANIA STATE COURTS AND THIS COURT OF JURISDICTION?

Suggested Answer: In the Affirmative.

TABLE OF CONTENTS

Page

Counterstatement of Questions Presented i

Table of Contents..... ii

Table of Authorities iii

Reasons for Denying the Writ 1

Counterstatement of the Case..... 1

Argument 2

Conclusion 5

TABLE OF AUTHORITIES

Page

CASES

Campbell v. Department of Labor and Industry, 471 A.2d 1331 (Pa. Commw. 1984) 3

RULES

Pennsylvania Local Agency Law, 2 Pa.C.S. § 751, *et seq.* 1, 3

STATUTES

2 Pa.C.S. § 101 *et seq.* 4

28 U.S.C. § 1257 1

42 Pa.C.S. § 5571(B) 2, 4

42 U.S.C. § 1983 3

REASONS FOR DENYING THE WRIT

The petition does not meet the jurisdictional requirements mandated by 28 U.S.C. § 1257 and well-settled Pennsylvania case law. Petitioner attempts to raise four constitutional questions related to the issuance of four condemnation orders against his properties for code violations. He failed/refused to initially appear and raise those issues before the local agency charged with hearing appeals of the orders. As a result, Pennsylvania courts did not have jurisdiction to hear his claims and he failed to preserve them for appellate review. Similarly, this Court lacks jurisdiction to review his claims. Notwithstanding, the Petition does not present any compelling federal or constitutional issues. His Petition should be denied.

COUNTERSTATEMENT OF THE CASE

On October 16, 1999, the Code Department of the Borough of Carlisle (herein, the "Borough") issued orders condemning four properties owned by Robert H. Barrett (herein, "Barrett").[1] The orders prohibited the use and occupancy of the buildings because of deficiencies under the Borough's Property Maintenance Code. As required by the Code, the orders clearly notified Barrett of his right of appeal within ten (10) days to the Board of Appeals.[2] Instead, on December 13, 1999, Petitioner

[1] The orders were served on Barrett on October 28, 1999.

[2] The Board of Appeals was created by the Borough under the Pennsylvania Local Agency Law, 2 Pa.C.S. § 751, *et seq.*, and is an administrative body having initial adjudicatory authority.

bypassed the administrative agency procedure and filed a direct appeal to the trial court. His appeal was untimely, both as to the ten-day administrative agency appeal period and the thirty day judicial appeal period.[3] The trial court quashed the appeal for lack of jurisdiction and its Order was affirmed by an unreported opinion of the Commonwealth Court of Pennsylvania, an intermediate appellate court.[4] When the Supreme Court of Pennsylvania denied discretionary review of his case, Barrett appealed to this Court.[5]

ARGUMENT

Rule 10 of the Rules of the Supreme Court of the United States indicates, in pertinent part, as follows:

> Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:
>
> . . .
>
> (c) a state court . . . has decided an important question of federal law that has not been, but should be settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

---

[3] *See*, 42 Pa.C.S. § 5571(B).

[4] *See*, Petitioner's Appendix B.

[5] *See*, Petitioner's Appendix A.

Barrett's Statement of the Case repeats, in large part, the same inaccurate averments of fact as contained in his appeal to this Court docketed to No. 00-1292. Not coincidentally, his first three Questions Presented and the corresponding portions of his argument repeat *verbatim* matters raised in that appeal.[6] Again, he miscategorizes this case as one premised under the umbrella of 42 U.S.C. § 1983. It is not. This is a case brought under the Pennsylvania Local Agency Law, 2 Pa.C.S. § 751, *et seq.*, as a result of property code orders issued by a municipality.

This Court should deny the Petition for Certiorari because the petitioner has failed to raise his claims in available administrative proceedings, thereby depriving Pennsylvania state courts and this Court of jurisdiction.

This case is strictly a matter of state law which presents no question warranting review by this Court. It has been long-settled in Pennsylvania that aggrieved persons must fully exhaust their administrative remedies, before seeking judicial redress. *Campbell v. Department of Labor and Industry*, 471 A.2d 1331 (Pa. Commw. 1984). The principle is so rooted in the promotion of judicial economy, that it goes to the fundamental ability of any court to exercise judicial review. Barrett never filed an appeal with the Board of Appeals.[7] Instead, he filed an untimely

---

[6] *See*, Response to Petition for Writ of Certiorari filed by the Borough at No. 00-1292 for additional reasons for denial of this Petition.

[7] Chapter 5, Section 5.7 of the Code of the Borough of Carlisle, provides:

> Any person aggrieved by a decision of any borough official or body who or which is responsible

appeal with the state trial court. He failed to exhaust his administrative appeals, thereby leaving the trial court without jurisdiction to consider the underlying merits, if any, of his claims.

Notwithstanding, Barrett compounded the jurisdictional infirmity by failing to appeal to the trial court within the thirty-day time period set forth in the Pennsylvania Judicial Code, 42 Pa.C.S. § 5571(B). Even if his failure to exhaust administrative remedies was not jurisdictional, he compounded his error by filing an untimely appeal to the trial court. Thus, it lacked jurisdiction in any event.

Barrett may not now raise issues relating to the underlying merits of his appeal, when he failed to preserve them by complying with fundamental jurisdictional requirements. On the facts of this case, there is no federal or constitutional question properly preserved for judicial review.

---

for the enforcement of the code or ordinances which are the subject of this chapter shall file a written notice of appeal with the Board of Appeals within ten (10) days after the rendering of such decision. The Board of Appeals is a local agency ordained by the Borough of Carlisle to hear appeals of the Borough determinations and to hold hearings under Pennsylvania Local Agency Law. 2 Pa.C.S. § 101 *et seq.*

CONCLUSION

This case solely involves jurisdictional principles of state law. Barrett failed to preserve judicial review of the merits of any underlying issues, including constitutional claims, and they are not properly before the court. Respondent Borough of Carlisle prays that this Honorable Court will deny Barrett's Petition for Writ of Certiorari.

Respectfully submitted,

MARTSON DEARDORFF WILLIAMS & OTTO
EDWARD L. SCHORPP, ESQUIRE
Counsel of Record
Ten East High Street
Carlisle, PA 17013-3093
(717) 243-3341
Attorneys for Respondent Borough of Carlisle